

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5192 of 1996

to

FIRST APPEAL No 5202 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR. JUSTICE M.H.KADRI

1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Rep

No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

No

5. Whether it is to be circulated to the Civil Judge?

No

SPECIAL LAND ACQUISITION OFFICER

Versus

KANTIBHAI CHHOTABHAI

Appearance:

Mr.P.G. Desai, GP, for the appellant

MR SANJAY M AMIN for Respondent No. 1

CORAM : MR. JUSTICE J.N. BHATT and

MR. JUSTICE M. H. KADRT

Date of decision: 08/05/97

COMMON ORAL JUDGMENT : (Per: M.H. Kadri, J.)

Admit. Learned advocate Mr. Nitin Amin, with Mr. Sanjay Amin, waives service of notice of admission on behalf of respondents-original claimants. By the consent of the learned advocates for the parties, this group of First Appeals is taken up for final hearing, today.

As the common questions of law and facts are involved in this group of First Appeal, they are disposed of by the common judgment.

Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated February 28, 1995, passed by the learned 3rd Extra Assistant Judge, Kheda, at Nadiad, in the group of Land Reference Cases Nos. 36 of 1988 to 46 of 1988.

The Executive Engineer, Canal Division, Nadiad, initiated proceedings to acquire the lands of the respondents-original claimants for the purpose of Bharoda Sili Kansh. Notification under Section 4(1) of the Act was published on June 21, 1979, which was, subsequently, cancelled, and fresh notification for acquisition of the lands was published in the official gazette on April 30, 1982. By the said notification, lands of the respondents-claimants came to be acquired for the public purpose, namely, Bharoda Sili Kansh. After following the necessary procedure under the Act, the Land Acquisition Officer has declared his award on September 23, 1986, and awarded compensation for the acquired lands to the claimants at the rate of Rs.1.80 ps per sq.mtr.

The respondents-claimants, feeling aggrieved by the said award, filed applications under Section 18 of the Act before the Collector, Kheda, at Nadiad. The said applications were referred to the District Court, Kheda, at Nadiad, which were numbered as Land Acquisition Reference Nos.36 of 1986 to 46 of 1988. The above stated land acquisition references came to be transferred to the court of the learned 3rd Extra Assistant Judge, Kheda, at Nadiad.

Before the reference court, the claimant of Land Acquisition Reference No.44 of 1988, Shankerbhai

Shanabhai, was examined at Exh.18. One Maijibhai Nathabhai was also examined at Exh.31.. In support of their case, the claimants produced certified copy of the judgment and award of the District Court, rendered in Land Acquisition Reference No. 519 of 1987 and allied matters, at Exh.10.

The learned 3rd Extra Assistant Judge, after appreciating oral as well as documentary evidence and taking into consideration the award produced on record at Exh.10, by his common judgment and award, determined the market price of the acquired land at the rate of Rs.9/per sq.mtr.

The appellant, by way of filing the present group of appeals, has challenged the common judgment and award of the learned 3rd Extra Assistant Judge.

We have gone through copies of oral as well as documentary evidence supplied by the learned advocate for the respondents-original claimants at the time of hearing.

Learned Government Pleader Mr. P.G. Desai has vehemently contended that the award of the reference court is excessive and on higher side. It is submitted that the notification, which was the subject matter of the award Exh.10, was published on June 4, 1981, whereas, in the present case, the original notification was published in the year 1979. The argument of the learned Government Pleader is devoid of any merit. It must be stated that earlier notification which was published under Section 4(1) of the Act was cancelled and fresh notification under Section 4(1) of the Act was published on April 30, 1982. Therefore, the reference court had to determine the market price as prevailing on the date of the fresh notification which was published on April 30, 1982. The reference court had determined the market price by relying upon the award Exh.10. In the award Exh.10, the market price of the land of the same village was determined at Rs.10 per sq.mtr. The learned advocate for the respondents-claimants has pointed out that award Exh.10 was carried in appeal before this Court by the State of Gujarat by way of filing First Appeals Nos.810 to 829 of 1993, which came to be dismissed summarily by the Division Bench of this Court (Coram: B.N. Kirpal C.J. & A.N. Divecha, J. as they then were), by an order dated December 22, 1994. Thus, the award Exh.10 was confirmed by this Court. The learned Government Pleader has not disputed this factual aspect.

The lands under acquisition in these appeals are also of village Oad, Taluka Anand. The purpose of the acquisition is also the same and the date of notification is subsequent to the date of publication of the notification which was the subject matter of award Exh.10. The notification which was subject matter of award Exh.10 was published on June 4, 1981, whereas, in the present case, the notification was published on April 30, 1982, i.e. after ten months. In this view of the matter, it cannot be said that the compensation determined by the reference court at Rs.9/- per sq.mtr is unreasonable or excessive. Earlier awards provide good guidance to the court in determining the market price of the acquired lands, if the notification in both the cases are to be in the proximity of time and subject matters of both the cases are similar in nature. The lands, which were subject matter of award Exh.10, are of the same village Oad and the lands are having the same fertility. It is a common knowledge that the acquired lands are situated in District Kheda where cash crop like tobacco is being cultivated. The land is having high fertility and, therefore, the market price determined by the reference court at Rs.9/- per sq.mtr is quite just and adequate. Therefore, the finding of the reference court determining the market price of the lands under acquisition at Rs.9/- per sq.mtr, deserves to be confirmed.

The reference court has ordered to deduct 5% of the government share with respect to the lands which were new tenure lands. Direction of the reference court to deduct 5% of government share with respect of to the acquired lands which were new tenure lands is erroneous, in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme Court 904. Question arose before the Supreme Court as to whether the government can deduct any amount from the compensation which was payable to the owner whose lands were compulsorily acquired under the Act. The Supreme Court, after considering the scheme of Section 43 of the Bombay Tenancy & Agricultural Lands Act and Section 23(1) of the Act, held that, when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 13 does not arise and the State is not entitled to deduct any amount from the compensation which was awardable to the claimants-owners. In view of the settled legal principle propounded by the Apex Court, the reference court was not justified in deducting the amount of 5% being the share of the Government with respect to the acquired lands which were new tenure lands. Award of the reference court is required to be modified to that

extent.

It is clarified that, as per the settled legal principle, the claimants shall not be entitled to claim interest on additional amount under Section 23(1-A) of the Act and on the amount of solatium under Section 23(2) of the act. It is further clarified that the claimants shall not be entitled to claim solatium on additional amount under Section 23(1-A) of the Act.

The learned advocate for the respondents-claimants has submitted that the acquiring body has already deposited the awarded amount of compensation in the trial court and that amount should be disbursed to the claimants forthwith.

In the result, the appeals are dismissed with no orders as to costs. Award of the reference court is modified accordingly by quashing and setting aside direction of the reference court to deduct 5% of government share with respect of to the acquired lands which were new tenure lands. The trial court is directed to disburse the amount deposited by the acquiring body to the respective claimants within six weeks from the date of the order. Direct service is permitted.

(swamy)